

STATEMENT OF
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Good morning Chairman Gonzalez, Ranking Member Westmoreland, and distinguished Members of the Subcommittee. I am Susan E. Dudley, Administrator of the Office of Information and Regulatory Affairs (OIRA), in the U.S. Office of Management and Budget (OMB). Thank you for inviting me to testify about analyzing and improving existing small business regulations. I appreciate the opportunity to discuss OIRA's efforts to ensure that the Federal Government takes due account of the impact of regulations on small business, to ensure that Federal Agencies consider cost-effective regulatory alternatives for small business and otherwise comply with the requirements of the Regulatory Flexibility Act, and to ensure that the Government is looking for ways to reform regulations to lower burdens on small business while maintaining important public protections. I am committed to reducing the regulatory and paperwork burdens that America's small businesses confront daily, and I look forward to exploring new approaches to advancing this critically important goal.

Small entrepreneurs are the engine of economic growth in America. Small businesses represent over 99 percent of all employers and provide 60 to 80 percent of new jobs. Yet, research by the Small Business Administration (SBA) Office of Advocacy suggests that small entities disproportionately shoulder regulatory and paperwork burdens. This research indicates that firms with fewer than 20 employees spend 45 percent more per employee than do larger

firms to comply with Federal regulations. OIRA, along with the Office of Advocacy and other Federal regulatory agencies, is working both to minimize unnecessary burdens, and also to help America's small businesses comply with regulatory and reporting requirements.

OIRA and Agency Review of New Regulations

Before discussing OIRA's role in the regulation of small business, I wanted to give you an idea of the staggering number of rules with which businesses must comply. Since OMB began to keep records in 1981, Federal agencies have published over 120,000 final rules in the Federal Register. OMB coordinated interagency review of over 21,000 of these published rules prior to publication. Historically, about 6 percent of the OMB-reviewed rules are considered "major" or "economically significant" rules, primarily because they were estimated to have an economic impact greater than \$100 million in any one year.

OMB reviews regulations pursuant to Executive Order 12866, issued by President Clinton in 1993. Executive Order 12866 holds that regulations should be based on an analysis of the costs and benefits of all available alternatives, and that agencies should select from among alternatives the regulatory approach that maximizes net benefits to society, unless otherwise constrained by law. Following this Executive Order, this Administration has developed a principled and transparent regulatory review structure that has achieved results. According to OMB's final 2007 *Report to Congress on the Costs and Benefits of Federal Regulation*, the average yearly cost of the new major regulations issued between 2001 and 2006 is about 47 percent less than over the previous 20 years, and yet the average yearly net benefits of new regulation has increased substantially.

OIRA and Agency Review of Existing Regulation: Solicitations for Regulatory Reform

While we are subjecting new regulations to greater scrutiny, most existing Federal rules have never been systematically evaluated to determine whether they are working as intended and what their actual benefits and costs have been. In practice, it is often difficult to know which regulations are still binding after many years of implementation and adjustment, and which regulations simply represent “sunk costs” for businesses and would no longer benefit from reform. Because of this, OMB decided during President Bush's first term to initiate a program to solicit input from the public as to which existing regulations, guidance documents, and paperwork requirements were most in need of reform. Our February 2004 request for reform nominations¹, with a clear focus on the manufacturing sector of the U.S. economy, was the third such solicitation of reforms undertaken by this Administration².

OMB's 2004 manufacturing initiative elicited 189 reform nominations from 46 commenters³. OMB evaluated these reform nominations and collaborated with Federal agencies in the development of response plans. OMB also sought evaluations of the recommendations by the Small Business Administration Office of Advocacy and the Department of Commerce's Office of the Assistant Secretary for Manufacturing and Services. In March, 2005, the agencies and OMB determined that 76 of the 189 nominations had potential merit and justified priority consideration and action by the Administration⁴. Actions on these priority reform nominations, which included milestones and deadlines, have ranged from performing a priority investigation

¹ The 2004 solicitation for reform nominations was part of the 2004 draft Report to Congress on the Costs and Benefits of Federal Regulation, which is available at http://www.whitehouse.gov/omb/inforeg/draft_2004_cbreport.pdf

² The 2001 and 2002 solicitations for reform nominations were also part of our 2001 and 2002 draft Reports to Congress. More information on all of our reform solicitations, including the 2001 and 2002 reports, and summaries of the public nominations, is available at http://www.whitehouse.gov/omb/inforeg/regpol-reports_congress.html

³ http://www.whitehouse.gov/omb/inforeg/2004_cb/list_2004cb.html

⁴ http://www.whitehouse.gov/omb/inforeg/reports/manufacturing_initiative.pdf

and reporting to OMB in order to determine appropriate next steps, to issuing modernized regulations.

Many of these priority reform candidates were of interest to small entities, and several of them were also included in SBA Advocacy's 2008 Regulatory Review and Reform Initiative (R3) list of "top-10" reforms identified as especially relevant for small business. To date, agencies have completed approximately 70 percent of the 2004 manufacturing reforms, and we plan on providing a comprehensive update on the status of these reforms in the draft 2008 *Report to Congress on the Costs and Benefits of Federal Regulation*.

Small Business Regulatory Reforms

More information on OMB's manufacturing initiative is available at http://www.whitehouse.gov/omb/inforeg/regpol-reports_congress.html, but I would like to illustrate by summarizing three successful small business reforms the Administration has already accomplished, as well as briefly discuss the reform nominations we have in common with the Office of Advocacy.

EPA's National Emission Standards for Hazardous Air Pollutants

In December 2005, EPA issued a final rule⁵ permanently exempting certain categories of "non-major" industrial sources that are subject to national emission standards for hazardous air pollutants (NESHAP) from the requirement to obtain an operating permit under title V of the Clean Air Act. The five exempted source categories are dry cleaners, halogenated solvent degreasers, chromium electroplaters, ethylene oxide sterilizers and secondary aluminum smelters. EPA estimated that this final rule will provide regulatory relief for over 38,000 sources, many of which are small businesses.

⁵ *Federal Register*, Volume 70, 75319.

EPA's Spill Prevention Control and Countermeasure (SPCC) Requirements Rule

This rule, published in December 2006⁶, revised certain requirements in the existing SPCC regulations reducing the regulatory and paperwork burden for smaller facilities that manage or use oil. For example, the revised rules allow these smaller facilities to self-certify their SPCC plan instead of requiring them to use a professional engineer to prepare a SPCC plan for their facility. The rule also modified several other provisions to reduce regulatory burden. EPA estimated that this rule would reduce costs by over \$100 million and reduce the associated paperwork burden by roughly 500,000 hours per year. EPA has also proposed further amendments to the SPCC program and expects to complete this rulemaking by the end of the year.

EPA's Toxics Release Inventory (TRI) Burden Reduction Rule

This rule, finalized in December 2006⁷, reduces reporting burden on small businesses while still maintaining the practical utility of the TRI data. By raising the release threshold for use of the short Form A from 500 to 2000 pounds, it allows more reporters to use the streamlined form while still retaining full Form R reporting on over 99 percent of releases and other waste management nation wide. In addition, it provides incentives for firms that are slightly above the eligibility threshold to reduce their emissions in order to qualify for the short form.

SBA Advocacy's Regulatory Review and Reform Initiative

As you are no doubt aware, in February of 2008, after significant review and analysis of the 82 nominations received in a public solicitation process similar to the process OMB undertook in 2004, SBA's Chief Counsel for Advocacy selected the top 10 rules for review and potential reform.

⁶ *Federal Register*, Volume 71, 77266.

⁷ *Federal Register*, Volume 71, 76932.

In particular, four of the reforms are similar to nominations we received in 2004 and previous reform nomination cycles. Note that Advocacy’s approach to these reforms is also similar to OMB’s manufacturing reform initiative in that they are not intended to short-circuit the normal notice and comment rulemaking process. In all cases, agencies are asked to reconsider, but not necessarily reform, their regulations in the way suggested by the nomination. If the agency conducts an analysis of the reform idea and concludes the reform cannot be justified, then “completion” of the reform may mean the Administration has decided not to pursue it. We believe, however, that these reforms have potential merit and justify further analysis and review:

Update Mine Safety and Health Administration (MSHA) Rules on the Use of Explosives in Mines to Reflect Modern Industry Standards: The nominator recommended that MSHA update its explosives regulations consistent with current industry standards. The submitter believes the change would both reduce compliance costs and improve safety by providing greater clarity and consistency. This nomination is similar to a reform recommended to OMB as part of the 2002 public nomination process, and we are interested in working with Advocacy and MSHA on this nomination.

Flexibility for Community Drinking Water Systems: The 1996 Amendments to the Safe Drinking Water Act established a process to allow small drinking water systems that cannot afford the treatment technology required to comply with a national primary drinking water standard to use an affordable variance technology instead. For these small system variances to be available for States to issue to small systems, EPA must find that there are no affordable compliance technologies for small systems nationally. EPA must also identify affordable variance technologies that are protective of public health, which may include treatment technologies, treatment techniques, or other means. The drinking water system must then

demonstrate to the State that its specific system cannot afford to comply with the new standard, and that a variance technology will ensure adequate protection of human health. The nominator stated that under EPA's existing guidelines for determining national affordability, no regulation has ever been found to be unaffordable and no small drinking water system has ever been permitted to apply for use of a variance technology. The nominator suggested that EPA consider alternative methods for determining affordability, including using different percentages of median household income in the community. This nomination is similar to a reform recommended to OMB by the public in 2002, and we are also interested in working with Advocacy and EPA to see that this nomination is pursued to completion.

Simplify the Rules for Recycling Solid Waste: The nominator suggested that EPA adopt a definition of solid waste that would eliminate certain forms of recycled materials from being considered "hazardous wastes," allowing them to be recycled more easily. This nomination is similar to a reform identified in 2004 as a priority in the OMB-initiated, government-wide effort to reform regulation in the U.S. manufacturing sector. A final rule on Revisions to the Definition of Solid Waste is currently under OMB review under Executive Order 12866, thus I am not able to discuss the details of the final rulemaking before we conclude review.

EPA Should Clearly Define "Oil" in its Oil Spill Rules: The nominator suggested that EPA adopt a procedure that supports a distinction between materials thought to be oil generated at petroleum refineries, and agricultural product processing materials and chemicals created through processing in chemical production and related industries. Although not directly related to this particular reform, several reforms to the SPCC regulations were identified in 2004 as priorities in the OMB-initiated, government-wide effort to reform regulation in the U.S.

manufacturing sector. OIRA is interested in working with Advocacy and EPA to see that this nomination is pursued to completion.

OIRA and Agency Review of Existing Regulation: Retrospective Regulatory Review

An additional potentially powerful tool for the reform of regulations affecting small businesses is a requirement for agencies to review, within 10 years of issuance, all regulations that have a “significant impact on a substantial number of small entities.” This is commonly known as a Regulatory Flexibility Act (RFA) Section 610 review. This requirement applies both to rules that agencies determined at the time of issuance had a significant impact on small entities, as well as to rules where reasonable evidence has surfaced that the rule had a significant impact. The second tier of SBA Advocacy’s Regulatory Review and Reform Initiative is to help agencies with their analytical obligations under Section 610, and to this end they released what OIRA considers is excellent guidance on this analysis in the fall of 2007. OIRA also plays a direct role in ensuring that agencies meet their obligation to publish their scheduled 610 reviews in their semi-annual Unified Regulatory Agenda. Last fall, for the first time, all such agenda entries became available in an electronic format that offers users an enhanced ability to obtain and search for information on upcoming regulations.

Other OIRA Activities That Help Small Businesses

The Paperwork Reduction Act of 1980 (PRA) established OIRA within the Office of Management and Budget. The PRA is premised on the principle that the Federal government should not require, or ask, citizens, businesses, organizations, State and local governments, and other public entities to comply with paperwork requirements that are unnecessary, duplicative, or unduly burdensome. Reauthorizations of the Act in 1985 and 1995, and the Small Business Paperwork Relief Act (SBPRA) of 2002, have further enhanced OIRA’s role in eliminating

unnecessary, duplicative, and unjustified paperwork burdens, particularly on small entities, and these goals remain high priorities for my office.

The PRA applies very broadly to agency collections of information, which can include reporting, recordkeeping, and third-party disclosure requirements that apply to ten or more persons, businesses, or State, local, or Tribal governments. Currently, there are over 8,500 information collections that have an active OMB approval. Without such OMB approval, agencies cannot implement an information collection. The PRA process for obtaining OMB approval includes public notice and comment procedures that provide an opportunity for the public to suggest ways that agencies can reduce burden (or estimate it more accurately) and improve the usefulness and timeliness of the information collected. After OMB's initial approval of an information collection, agencies must seek and obtain extensions of OMB approval at least once every three years. Consistent with the PRA's goals, OIRA's reviews of agency information collection requests involve an assessment of the "practical utility" of the information to the agency and the associated burden that collecting this information imposes on the public.

The Paperwork Reduction Act and Small Businesses

In conducting our reviews of agency information collection requests, OIRA is particularly sensitive to collections that affect small businesses. Indeed, the PRA's statement of "purposes" identifies as a key PRA goal minimizing the "paperwork burden" on "small businesses."

The PRA also provides specific direction to agencies on how they can minimize the burdens that they impose on small businesses, using approaches such as "(i) establishing differing compliance or reporting requirements or timetables that take into account the resources

available to those who are to respond; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements; or (iii) an exemption from coverage of the collection of information, or any part thereof.”

When the PRA was reauthorized in 1995, Congress added a requirement that agencies certify, as part of their requests for OMB approval of an information collection, that the collection “reduces to the extent practicable and appropriate the burden” on small businesses and other small entities. OMB added this certification requirement to the OMB PRA implementing regulations (5 C.F.R. 1320.9(c)). In addition, agency information collection requests submitted to OMB must indicate whether the information collection will have a “significant economic impact on a substantial number of small entities.”

The 2002 SBPRA further reinforced the PRA’s focus on minimizing small business paperwork burdens by establishing a multi-agency Task Force to address this issue. On June 28, 2003, the SBPRA Task Force submitted its first report to Congress, which included a number of recommendations to streamline the Federal information submission process and reduce small business paperwork burdens. Specifically, the report outlined steps to consolidate information collections, develop a listing of these collections, and allow for electronic submission of forms. One year later, the SBPRA Task Force submitted a second report to Congress that made recommendations concerning the dissemination of information by agencies to facilitate compliance with Federal paperwork requirements. The SBPRA also amended the PRA to require agencies to “make efforts to further reduce the information collection burden for small business concerns with fewer than 25 employees.”

Ongoing Efforts to Reduce Small Business Paperwork and Compliance Burdens

Motivated by these statutory requirements, Federal agencies have taken a number of steps over the past several years to reduce the amount of information they collect from small businesses and to ease their compliance burdens, often through the innovative use of information technology. Nonetheless, we have seen government-wide paperwork burdens increase over time, as OMB has documented in its annual Information Collection Budget report (ICB) submitted to Congress pursuant to the PRA. Government-wide PRA burden increased from 8.24 billion hours in FY 2005 to 8.92 billion hours in FY 2006, an increase of more than 8 percent.

A recurring theme of the ICB in recent years has been the very large role played by the Internal Revenue Service (IRS) in the Federal government's information collection activities. Because of the Federal income tax system, the IRS is an important part of the lives of all taxpayers, including businesses large and small. This fact was again reflected in last year's ICB, when OMB reported that IRS was responsible for about 78 percent of the Federal government's total reporting burden on the public in FY 2006.

Despite these broader trends of aggregate burden increases, agencies have been able to achieve some notable burden reduction successes. Let me highlight just a few examples.

Internal Revenue Service: Employer's Annual Federal Tax Program

As reported in last year's ICB, the IRS Office of Taxpayer Burden Reduction recently launched an initiative to reduce burden on small business taxpayers who owe \$1,000 or less in Employment Tax (ET) by establishing new rules and processes that will allow them to file their ET returns, as well as pay the ET tax due, on an annual rather than a quarterly basis. As long as these filers remain at \$1,000 or less in total Employment Tax they will remain filers of Form 944, the Employer's Annual Employment Tax Return. Those businesses that exceed this

threshold will be subject to the requirement to file Form 941, the Employer's Quarterly Employment Tax Return. By allowing smaller businesses to file annually instead of quarterly, IRS estimated that reporting burdens would drop by almost 30 million hours.

Small Business Administration: The Business Gateway Initiative

SBA's Business Gateway Initiative offers businesses a single access point to Federal regulatory and paperwork compliance resources, including forms and tools. The initiative, which includes Business.gov, Forms.gov, and data harmonization activities, reduces the amount of time and money business owners spend on complying with Federal regulations and associated paperwork so that they can spend more time running their business. Specifically, Business.gov simplifies and improves businesses' ability to locate government compliance guides and forms they deal with on a regular basis, thereby reducing the effort needed to comply with government regulations. Using a voluntary customer satisfaction survey on Business.gov, business owners have self-reported saving over 2.9 million hours (YTD in FY 2008) by using the portal. Since the re-launch of Business.gov in October 2006, business owners have self-reported a total of almost 6.2 million hours saved.

Business.gov is an innovative and search-focused web site where businesses can access up-to-date regulatory and paperwork compliance information and save time doing so. The information available through Business.gov was assembled by reaching across agency silos to make content accessible and relevant to the business community. Business Gateway epitomizes the spirit and intent of the PRA by helping businesses save time getting answers to important questions including: (1) What laws and regulations apply to me?; (2) How do I comply?; and (3) How do I stay in compliance?

The Business Gateway Initiative also promotes “data harmonization,” which is defined as the reduction of regulatory reporting burden on citizens and business by reducing the complexity of reporting processes and improving the reuse and distribution of information across Federal, State, and local agencies. Business Gateway supports data harmonization by advocating for and supporting data harmonization solutions.

Business Gateway’s seminal data harmonization project is called Single Source Coal Reporting (SSCR). Previously, the coal mining industry submitted highly redundant, paper-based forms to regulators. As of April 2006, they can submit data and pay fees using a single online form, and have it automatically sent to appropriate regulators. Currently, the Federal partners are IRS and the Departments of Labor and Interior; the State partners are Pennsylvania and Virginia. Business Gateway will release a comprehensive analysis on data harmonization by mid-August. The analysis will include five case studies to depict various levels of Federal, State, agency, and industry participation.

OMB and SBA: Compliance Assistance for Small Businesses

Finally, once all these regulatory reforms and paperwork burdens have been vetted and put in place, both OMB and SBA play a key role in helping small businesses simply to understand and comply with their obligations. Specifically, the SBPRA requires Federal agencies to designate one point of contact to act as a liaison between the agency and small business concerns. SBPRA also requires OMB, in conjunction with SBA, to publish on the Internet a list of compliance assistance resources available at Federal agencies for small businesses. In accordance with the SBPRA, Business.gov published a “Federal Compliance Contacts” page which gives the names, phone numbers and e-mail addresses of individuals at Federal agencies that can help small business answer regulatory and legal questions.

Business.gov also publishes Small Business Guides that include links to Federal, State and local agency resources that help small businesses meet their regulatory requirements. This information is presented together so that if a small business owner does not find the information they are seeking, a “live” person to assist them is readily identifiable.

Conclusion

Let me conclude by reiterating my office’s commitment to ensuring that small business, the engine of economic growth in the United States, is not unduly burdened by unnecessary regulation and paperwork. Thank you very much for the opportunity to testify in today’s hearing. I would be happy to answer any questions you may have.